

SUPPORT FOR THE AMENDMENTS

Claim 1 has been amended.

Support for the amendment of Claim 1 is provided by page 10, lines 3-13 of the specification and Example Products 2 and 6-9 of Table 1.

Further with respect to the amendment to Claim 1 and to the amendments to the specification, Applicants submit that the phrase “containing the fats and oils and at a weight ratio of 0.4 to 4.5 relative to the net weight of yolk in the enzyme-treated yolk” should properly be represented as “containing the fats and oils and at 0.85 to 4.5 percent by weight relative to the net weight of yolk in the enzyme-treated yolk”. This amendment is consistent with the data presented in Table 1 wherein in Example Product 1, for example, 0.07/15.22 is 0.0045/1 (i.e., 0.45/100).

No new matter has been entered by the present amendment.

REMARKS

Claims 1-20 are pending in the present application.

The objection to the specification as containing a hyperlink is obviated by amendment. Applicants have amended the hyperlink from page 6 of the specification. Withdrawal of this ground of objection is requested.

The objection to Table 1 and the rejections of Claims 1-20 under 35 U.S.C. §112, first paragraph (enablement), and 35 U.S.C. §112, second paragraph, are obviated by amendment.

The Examiner has properly recognized that the phrase “containing the fats and oils and at a weight ratio of 0.4 to 4.5 relative to the net weight of yolk in the enzyme-treated yolk” should properly be represented as “containing the fats and oils and at 0.85 to 4.5 percent by weight relative to the net weight of yolk in the enzyme-treated yolk”. Consistent with this recognition, Applicants have amended the specification at page 10 and in Table 1, as well as Claim 1, to use the proper unit designator. Thus, this ground of objection and these grounds of rejection are believed to be moot.

Withdrawal of this ground of objection and these grounds of rejection is requested.

The rejections of: (a) Claims 1-5 and 7-13 under 35 U.S.C. §103(a) over Kawai et al in view of Goto et al and (b) Claims 6 and 14-20 under 35 U.S.C. §103(a) over Kawai et al in view of Goto et al and Koike et al are respectfully traversed.

Kawai et al disclose the use of an enzyme-treated yolk and a diacylglyceride in the oil phase. However, Kawai et al fails to disclose or suggest the use of an antioxidant, the amount thereof relative to an oil phase containing the fats and oils, or the amount relative to the net weight of yolk in the enzyme-treated yolk, much less the effect on aging flavor. Goto et al

does not disclose or suggest an enzyme-treated yolk treated with one or more enzymes selected from the group consisting of esterase, lipase and phospholipase. Therefore, Goto et al fails to disclose or suggest that any problem exists with respect to aging flavor. Goto et al discloses an amount of antioxidant for use in their disclosed composition, but clearly fails to disclose or suggest the amount relative to the net weight of yolk in the enzyme-treated yolk.

Applicants submit that neither Kawai et al nor Goto et al, or the combination thereof, provides all the limitations of the claimed invention. Specifically, even if Kawai et al and Goto et al were combined, the combination does not specifically disclose a weight percentage of antioxidant relative to the net weight of yolk of 0.85 to 4.5. The Examiner alleges that this limitation would be met, however, if the artisan were to add an antioxidant as disclosed by Goto et al to Example 4 disclosed by Kawai et al, the claimed weight percentage would not be met.

Further, Applicants disagree with this treatment of the references by the Examiner. It is not proper to selectively pick-and-choose random examples to insert an additional ingredient (i.e., antioxidant) in a specific disconnected concentration where neither reference provides any basis to disclose or suggest the amount of the antioxidant relative to the net weight of yolk in the enzyme-treated yolk. It is disclosed in Goto et al, column 4, lines 65-67, that an antioxidant is preferably added to the oil and fat composition of the invention disclosed therein in an amount of 50 to 2,000 ppm. It is noted that in Example 9 of Goto et al, an antioxidant is not present, the oil and fat composition of Example 9 of Goto et al may contain an antioxidant in an amount of 0.714% relative to the net weight of yolk. The value can be calculated as follows:

It is disclosed at column 13, last table, of Goto et al that Example 9 contains 50 parts by weight of oil and fat, but no antioxidant. Taking into account Goto et al, column 4, lines 65-67, which discloses that an antioxidant is preferably added to the oil and fat composition

of their invention in an amount of 50 to 2,000 ppm, it would be possible for the artisan to envision that the oil and fat composition of Example 9 of Goto et al may contain an antioxidant in an amount of 0.1 part by weight. It is disclosed at column 13, last table, of Goto et al that 14.0 parts by weight of yolk is contained in the oil and fat composition of Example 9. Thus, in the oil and fat composition of Example 9 of Goto et al the amount of the antioxidant relative to the net weight of yolk would be $0.1/14.0 = 0.00714$ or 0.714%.

Thus, even though not specifically included in Example 9, the maximum amount of antioxidant relative to the net weight of the yolk in the disclosure of Goto et al that is possible to envision would be 0.714%, which falls outside the scope of Claim 1. As such, even when combining the disclosure of Kawai et al and Goto et al, the claimed invention is not obtained.

Further, Applicants refer the Examiner to the background of the invention bridging pages 1-2 of the specification, where it is disclosed that that the present invention seeks to solve problems in Kawai et al, for example, which may appear to have excellent outward appearance and physical properties, but has inconsistent taste profiles upon aging. This problem is not disclosed, suggest, or even apparent from the disclosure of Kawai et al. Indeed, at page 2, last two lines, Kawai et al state that their composition have “excellent taste... properties”. Goto et al does not disclose an embodiment having enzyme-treated yolk. As such, this reference does not recognize or even relate to the problems in taste stability in the compositions of Kawai et al.

The Supreme Court has held that the discovery of a problem or a cause of a problem can lend patentability to an invention. The discovery of a problem is often the key to making a patentable invention. Thus, the patentability of an invention under 35 U.S.C. §103 must be evaluated against the background of the highly developed and specific art to which it relates, and this background includes an understanding of those unsolved problems persisting in the

art solved by the invention. *See, Eibel Process Co. v. Minnesota & Ontario Paper Co.*, 261 U.S. 45, 43 S.Ct. 322, 67 L.Ed. 523 (1923).

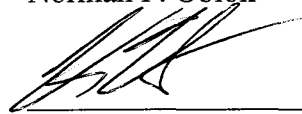
Koike et al is only cited as disclosing the content of trans-unsaturated fatty acids in the fatty acids constituting the diglycerides. This reference does not compensate for the deficiencies in Kawai et al and Goto et al discussed above. As such, the claimed invention would not be obvious in view of the combined disclosures of Koike et al, Kawai et al and Goto et al.

In view of the foregoing, Applicants request withdrawal of these grounds of rejection.

Applicants submit that the present application is in condition for allowance. Early notification to this effect is respectfully requested.

Respectfully submitted,

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